

O & J CHECKLIST

IP:		Index #	
Last Name	First Name	Justice	
		Decision date:	

REQUIRED PAPERS:

The following **highlighted** papers are missing and/or incomplete:

- | | |
|---|---|
| <input type="checkbox"/> Notice of Settlement with affidavit of service on required parties | <input type="checkbox"/> Minutes Transcript of hearing/findings |
| <input type="checkbox"/> Proposed O&J | <input type="checkbox"/> Notice of Pendency (MHL §81.24) <input type="checkbox"/> N/A |
| <input type="checkbox"/> List of Assets and Income <input type="checkbox"/> N/A | <input type="checkbox"/> Court evaluator's report |
| <input type="checkbox"/> O.S.C. with petition | |

Required Affirmation(s)/Affidavits(s) of Service for:

- | | |
|---|--|
| <input type="checkbox"/> Petitioner/Attorney (if petitioner is not settling the order and judgment) | |
| <input type="checkbox"/> Cross Petitioner / Respondent / Attorney | |
| <input type="checkbox"/> Other (specify) | <input type="checkbox"/> Other (specify) |
| <input type="checkbox"/> Court Evaluator | <input type="checkbox"/> USC 875 form |
| <input type="checkbox"/> Counsel for AIP <input type="checkbox"/> court appointed | <input type="checkbox"/> USC 875 form |

****The following **highlighted** paragraphs are missing and MAY be required by the judge:

FACTS:

- Recitation of facts / proceedings & corresponding dates
 - AIP's appearance at hearing AIP's appearance waived
 - AIP consents to guardianship

ORDERED paragraphs:

Appointment of Guardian

- AIP is determined to need a guardian
 - Appointment of guardian - Name and address
 - Property Person
 - Bond amount ____ Waived

Appointment of Trustee

- Appointment of Trustee
- Bond Amount + Titling of trust account
- Filing an executed copy of trust

■ **Part 36 paragraphs:**

- Part 36 applicable - 22 NYCRR §36.1
- non-profit guardian (not Part 36) family guardian (not Part 36) family nominated guardian August 22, 2011(not Part 36)
- Guardian - legal services **without** court approval:
 - may not act as own counsel (Part 36) may not retain counsel (Part 36)
 - may act as own counsel (not Part 36) may retain counsel (not Part 36)
 - Guardian shall not pay counsel fees w/o court approval
- Guardian - accounting services **without** court approval
 - may not retain accountant without prior court approval (Part 36)
 - may retain accountant without prior court approval (not Part 36)
 - Guardian shall not pay accountant fees w/o court approval

- Judiciary Law 35A - file UCS 875 forms

■ **Surety**

- Premiums to be paid 60 days after commission and annually
- Surety may bring motion to compel payment

■ **Standard Paragraphs**

- Amend caption
- County Clerk to issue Commission MHL §81.27
- Banking Law section 9-I
- Duration of guardianship _____
- Gd has authority granted by laws of US and NYS
- MHL §81.20 fiduciary duty generally - 5 paragraphs
- MHL §81.20 fiduciary duty re: property - 5 paragraphs
- Gd to file initial report
- Gd to file annual report (in MAY)
- Gd compensation pursuant to MHL §81.28 (usually SCPA 2307)
 - If guardian receives monthly fee, is there “reduction of NAMI language”
- Gd takes no compensation until approved by the court
- Order constitutes the commission of the guardian (if applicable)

■ **Court examiner**

- Appoint a court examiner
- Serve the court examiner
- Court examiner shall notify the court if Gd has not filed accountings

■ **Property Powers**

- List of Income and Assets (Schedule A)
- MHL §81.21 list of property powers (depends on minutes/hearing)
 - Marshal income and assets
 - Investigate income/assets
 - Apply for govt benefits
 - Investigate income/assets
 - Access/release confidential records
 - Estate planning & gifting paragraphs
- Application to fix bond for additional property
- All persons to deliver to guardian upon presentation of Commission
- Gd may make reasonable expenditures for IP's necessities
- Gd may invest surplus funds (prudent investor language)
- Gd may maintain civil judicial proceedings Specific case _____
- Gd to pay reimburse Medicaid with excess resources
- Gd to support IP and legal dependents
- Gd to access safe deposit box w/ bank rep. and surety
- Gd may not spend more than \$5,000 per transaction
- Nursing home shall notify the Court /in 30 days of placement
- Real Property** (if applicable)
 - Gd may not alienate, mortgage, lease or dispose of property (RPAPL Art 17)
 - File with recording officer of county + notice of pendency

■ **Personal Powers**

- MHL §81.22 list of personal powers (depends on minutes/hearing)
 - Determine provider of care
 - Determine social environment
 - Access/release confidential records
 - Apply for govt benefits
 - Consent to general/routine medical treatment
 - Choose place of abode Key access
 - Determine IP's education
 - Determine ability to travel
 - Determine whether IP can have driver's license

■ **Termination of Guardianship**

- Gd to pay bills incurred prior to IP's death
- Gd to purchase prepaid irrevocable funeral contract
- Gd to pay reasonable funeral expenses
- Gd to set aside _____ for termination of guardianship (MHL §81.44)
- Termination other than death of IP
- Termination for death of IP, MHL §81.44 paragraphs - 5 paragraphs
- Gd to establish luxury fund
- Gd to establish separate burial account

■ **Fees**

- Petitioner's attorneys fees
- Cross petitioner (if applicable)
- Other _____
- Court Evaluator
- Counsel for IP (if applicable)
- Other _____

■ Temporary guardian to file report (if applicable)

■ O&J to be served on interested parties (**check OSC and NOS of O/J**)

- IP
- Surety
- Court examiner
- Guardian
- Petitioner
- Court evaluator
- Attny for AIP
- Other served with the OSC

■ Notice of all further proceedings (list of interested parties)

- IP
- Surety
- Court examiner
- Guardian
- MHLS
- HRA/DSS
- Other _____

■ O&J to be served and read to IP or Waived

■ O&J to be served with Notice of Entry w/in 10 days

■ Compliance conference

FOR JUDGE'S USE ONLY

Phone call to settling attorney:

- The order has been signed. You must follow up in person with the County Clerk's record room 122A for a copy.
- The submission is rejected due to the following (check all that apply):
 - Missing papers as noted above
 - Missing decretal paragraphs as noted above.
 - Notice of Settlement not submitted within the 60 day time frame as per NYCRR §202.48(a)
 - Other (explain below)

YOU MUST PICK UP THE REJECTED PAPERS IN THE GUARDIANSHIP OFFICE (RM. 850) AND RE-SETTLE THE PROPOSED ORDER ON NOTICE AS PER NYCRR §202.48.

Dated: _____

_____ J.S.C